



# CONTRACTOR DEVELOPMENT POLICY



## RUSTENBURG LOCAL MUNICIPALITY





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## GLOSSARY

**“Acceptable tender”** means the same as the definition rendered in the Preferential Procurement Framework Act, viz. any tender which, in all respects, complies with the specifications and conditions of tender as set out in the relevant tender document. For the purpose of this policy it shall also include meeting the criteria for particular categories of contractors that are targeted by the contractor development programmes undertaken by the Rustenburg Local Municipality

**“Best practice contractor recognition scheme”** refers to the scheme set up in terms of section 21 of the Construction Industry Development Board Act

**Best practice project assessment scheme** refers to the scheme set up in terms of section 23 of the Construction Industry Development Board Act

**Black people** do not refer specifically to skin colour but rather to racial classification. In South Africa, it is an umbrella term for Africans, Coloureds and Indians

**Broad Based Black Economic Empowerment** means the same as the expanded definition rendered in the Broad Based Black Empowerment Act, viz. the economic empowerment of all black people including women, youth, disabled people and people living in rural areas through diverse and integrated socio-economic strategies

**Joint venture** means when two or more CIDB-registered contractors joined together execute a particular sub-project, project or sub-programme. They don't amalgamate but retain their individual identities with the general idea being that they will go their separate ways once the work has been completed

**Construction industry** means the same as the definition rendered in the Construction Industry Development Board Act, viz. the broad conglomeration of industries and sectors which add value in the creation and maintenance of fixed assets within the built environment

**Contractor** means a CIDB registered service provider that the Rustenburg Local Municipality enlists to execute a certain construction sub-project, project or sub-programme

**Black emerging contractor** means a CIDB registered service provider that the Rustenburg Local Municipality enlists to execute a certain construction sub-project, project or sub-



programme and which is also owned, managed and controlled by Africans, Coloured and or Indians

**Programme**, unless otherwise stated explicitly, means a contractor development programme undertaken by the Rustenburg Local Municipality

**Project**, unless otherwise stated explicitly, means a sub-project, project or sub-programme of a contractor development programme undertaken by the Rustenburg Local Municipality

**Registered contractor** means a contractor registered by the Construction Industry Development Board

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## EXECUTIVE SUMMARY

This policy is meant to ensure that there is legitimacy, consistency and ease in the roll-out and implementation of contractor development programmes by the Rustenburg Local Municipality

The policy outlines best practice approaches with regard to the following:

- Targeted selection of projects
- Targeted selection of contractors
- Pre-assessment of contractors selected to participate in contractor development programmes
- Supporting, training and mentoring participating contractors
- Risk and cost sharing
- Dispute resolution
- Post-assessment of contractors exiting the programme

Importantly, the policy provides a blueprint for administering contractor development programmes in a methodical and comprehensive way. The policy also outlines typical processes associated with initiating, planning, organising, directing, implementing, controlling and closing-out are detailed.



## SECTION 1: INTRODUCTION

### 1.1 Introduction

1.1.1 Contractor development programmes undertaken by the Rustenburg Local Municipality should not operate in vacuum but should be underpinned by the following:

- Best practices relating to and lessons learned from similar programmes undertaken elsewhere in South Africa (e.g. RLM Vuk'uphile, EThekweni or Western Cape) etc;
- A coherent best practice guidelines and strategic framework that is applicable to South Africa in general and the North West Province in particular.

1.2.2 The following norms, standards and benchmarks should apply for contractor developer programmes undertaken by the Rustenburg Local Municipality;

- To ensure sound and coherent administration, no contractor development programme must implemented without a confirmed budget allocation;
- To ensure fiscal affordability and control, the number and type of projects and the number and type of contractors that would be required for a contractor development programme must be determined in advance and in line with an approved targeting strategy;
- To ensure the achievement of meaningful outcomes, projects must be subjected to the cidb's prescribed tender value ranges taking into consideration programme objectives of the municipality;
- To ensure fairness and equal opportunity, participating contractors must be selected on the basis of predetermined and transparent criteria that has been approved by the relevant programme management committee;
- To ensure maximum beneficiation, participating contractors must be appointed for a pre-defined period which does not exceed a maximum of 3 years,

### 1.3 Best practices and lessons learned

- Contractor development programmes must be geared primarily to improving the quality, speed and scale of services (e.g. capital works and maintenance), creating jobs and work opportunities and addressing skills shortages and gaps; and, only secondarily to enhancing capacity and promoting equity ownership;
- Contractor development programmes must be aligned and incorporate the cidb's Best Practice Project Assessment Scheme; the Best Practice Contractor Recognition Scheme; the South African Construction Excellence Model; and, the Emerging Contractor Development Model;



- In order to pre-empt negative, anti-developmental and anti-empowerment practices such as fronting, contractor development programmes must endorse joint ventures only where each partner would have independently met the qualifying criteria of the targeting strategy;
- Contractor development programmes must provide a platform for meaningful public and private sector input towards achieving the objectives of transformational initiatives including but not limited to the following: Construction Charter, Expanded Public Works Programme, Emerging Contractor Development Programme, Vu'kuphile Programme and Contractor Incubator Programme;
- Contractor development programmes must advance the interests of black, women, youth and disabled contractors in particular;
- Contractor development programmes must provide access by participating contractors to relevant information & resources, business & skills training and financial leveraging;
- Contractor development programmes must not be overly concentrated in a few favoured areas but rather be spread throughout the Rustenburg jurisdiction including rural areas; and,
- contractor development programmes must incorporate an element of monitoring and quality control, guard against poor performance and wastage of resources.





## SECTION 2: POLICY FRAMEWORK

### 2.1 Introduction

- 2.1.1 This Section summarises the legislative framework for contractor development programmes undertaken by the Rustenburg Local Municipality
- 2.1.2 Included are both national and provincial imperatives.

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## SECTION 3: STRATEGIC FRAMEWORK

### 3.1 Introduction

3.1.2 This Section draws particularly from the following:

- National Contractor Development Programme Framework: 2010 and Beyond; and,
- Integrated Development Plan (IDP) (2016-2017).

### 3.5 Principles

3.5.1 Contractor development programmes undertaken by the Rustenburg Local Municipality must adhere to the principles in the cidb's "National Contractor Development Programme Framework: 2010 and Beyond" and the cidb's "Guidelines for implementing Contractor Development Programmes:

- Participation in contractor development programmes should be limited to contractors: (1) who have been qualified, approved and accepted on the basis of predefined criteria; (2) who exhibit potential to grow and make best use of the governmental support offered; and, (3) All contractors who have achieved or reached the predefined criteria **as per the programme objectives**, will be exited from the programme
- Contractor appointments must be made on the basis of confirmed budgets, a well-defined programme strategy, and the appropriate allocation of resources and skills.

### 3.6 Programme definition

3.6.1 Contractor development programmes undertaken by the Rustenburg Local Municipality must involve the CIDB Provincial Office which would provide necessary support in the design and implementation of the programme.

The involvement of other willing and capable stakeholders is desirable, which should complement efforts on making the programme successful.

3.6.2 While meeting municipal specific objectives, contractor development programmes must simultaneously be aligned with the objectives of the cidb's National Contractor Development Programme Framework which are:

- To enhance the capacity and promote equity ownership across the different contracting categories and grades;
- To improve skills and performance in the delivery of capital works and maintenance across the public sector.
- To improve the grading status of contractors in targeted categories and grades;



3.6.5 Contractor development programmes must also align with provincial imperatives. In this regard, the Integrated Development Plan of the Rustenburg Local Municipality for the period 2014-2017 reflects its contribution in regard to the following three of the twelve National Policy Outcomes:

- Outcome 5 A skilled and capable work-force to support an inclusive growth path;
- Outcome 6 An efficient, competitive and responsive infrastructure network; and,
- Outcome 7 Vibrant, equitable and sustainable rural communities and food security for all.

3.6.6 Contractor development programmes should contribute to the attainment of these Policy Outcomes via construction and maintenance related sub-programmes.

3.6.9 The Strategic Plan of the Rustenburg Local Municipality has further identified the following drivers as key to the sustainability of contractors:

- Focusing primarily on job creation and labour intensive programmes;
- Appointing rigidly on the basis of BEE and provincially-based contractors;
- Extending the Expanded Public Works Programme (EPWP) guidelines to apply to all the department's construction and maintenance projects; and,
- Rolling out a Community Training Strategy to ensure that communities are vested with sufficient numbers of individuals with the appropriate skills.



## SECTION 4: PROGRAMME DEFINITION

### 4.5 Alignment and sequencing

4.5.1 For any contractor development programme to be successful, it must be structured around a baseline. The following are pre-requisites before implementation of any municipal contractor development programme:

- Conduct a situational analysis (e.g. SWOT, PESTEL);
- Conduct a scenario analysis (e.g. strategic plan of the Rustenburg Local Municipality);
- Conduct a gap analysis (that is, between the actual here-and-now and the desired future);
- Identify needs;
- Prioritise needs; and,
- Identify opportunities for targeted contractor development based on CIDB's grading system.

4.5.2 With that information (especially of prioritised needs and identified opportunities), the planning and organising of a contractor development programme may proceed. The business case should include the following:

- Outlining programme goals and descriptions;
- Defining deliverables and measurable outcomes;
- Drafting special conditions (e.g. for approving joint ventures);
- Establishing appropriate committees and teams and clearly conveying their respective roles and responsibilities to each member;
- Identifying, sourcing or ring-fencing a contractor development programme budget;
- Scoping the work, number, complexity and locality of projects, time-frames and allocating sub-budgets to each;
- Establishing and matching the number of contractors and Grade levels with the number, complexity and locality of each project;
- Delineating criteria for approving joint ventures; and,



- Firming up the human and material resources required, including institutional arrangements.

4.5.3 Once this has been accomplished, the Contractor Development Programme Manager must co-ordinate the writing up of the following, which should be incorporated into the Programme Business Plan:

- Procurement strategy;
- Training and mentoring strategy;
- Monitoring and evaluation strategy;
- Exit and dispute resolution strategy; and,
- Post-exit support strategy (two-year period).

4.5.4 The next stage is implementing. This should include the following:

- Publicising the contractor development programme in the preferred media;
- Launch the programme;
- Invite qualifying contractors to apply for participation in the various projects;
- Screen and assess applicants; and,
- Appoint successful contractors.

4.5.5 Once the contractor development programme has commenced, the Rustenburg Local Municipality in general and the Project Management Unit in particular must ensure that it is properly monitored. This stage will be characterised mostly by the following activities:

- Monitoring;
- Evaluating;
- Compiling periodic formative reports;
- Resolving payment disputes;
- Risk management; and,
- Quality management.

4.5.6 The last stage of the contractor development programme is closing-out. This may not necessarily mean the termination of the programme itself but rather the termination of



one round of contracting or the termination of a project/s within that programme. This should include:

- Early termination or graduation of contractors;
- Handover;
- Project termination / Close out
- Compilation of summative report; and,
- Publicising success or closure of sub-programme.

#### **4.6 Project appraisal**

- 4.6.1 Projects must be targeted and prioritised in accordance with the targets and priorities set out in the business case for the contractor development programme in question.
- 4.6.2 No deviation from the programme business case should be allowed. In exceptional cases, if allowed, the deviation must be authorised by the Programme Management Committee/ Contractor Development Steering Committee.



## SECTION 5: PROJECT APPRAISAL

### INTRODUCTION

#### **5.1 Roles and responsibilities of participants within the Contractor Development Programme**

- 5.1.1 Persons and entities that are obstructive and adding no value to the programme should be exited from the programme;
- 5.1.2 Persons and entities that are deemed to be facilitatory and adding value must, at all times, strive, with a common purpose, to protect the integrity of the contractor development processes;
- 5.1.3 Each person and entity must stay with their predefined roles and responsibilities.
- 5.1.4 All interactions shall be characterised by mutual respect and empathy.

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## SECTION 6: ROLES AND RESPONSIBILITIES

### 6.1 Introduction

- 6.1.1 Contractor development programmes undertaken by the Rustenburg Local Municipality should involve a multiplicity of role-players in pursuit of common goals.
- 6.1.2 This, however, should not detract from the need for role-players to have varying roles and responsibilities. The success of the contractor development programmes may well depend on these distinctions.

### 6.3 Leadership

- 6.3.1 CIDB must provide overall programmatic guidance as well as good practices guides, contractor grading statistics, contractor registration, and facilitate access to relevant information through the North West Provincial Office;
- 6.3.2 The Rustenburg Local Municipality must provide the budget, training opportunities, strategic alignment and facilitate access to resources and financial assistance pertaining to sub-programmes and projects undertaken in terms of the Municipal Contractor Development Programme.

### 6.4 Management level 1: Contractor Development Steering Committee

- 6.4.1 The Rustenburg Local Municipality must constitute a Contractor Development Steering Committee comprising mostly key employees from within its ranks to provide efficient, operational support in regard to municipal-wide contractor development programmes.
- 6.4.2 Though, taking into account the peculiarities and distinct needs & objectives of each intervention - it may ultimately be determined strictly on a programme by programme basis - it is recommended that the steering committee generally comprise the following:
- PMU Manager: who shall serve as the Chair of the Steering Committee;
  - Project coordinator: who shall oversee the programme or project which includes submitting periodic progress reports.
  - Representative from the Procurement Division, who shall oversee the contractor selection process;
  - Representative from the Finance Division, who shall oversee all budgetary aspects;
  - Representative from the Legal Division, who shall oversee all legal arrangements including contract drafting;





- Representative from the Bojanala Platinum District Municipality
- Representatives from the National and Provincial Department of Public Works
- Manager of the North West CIDB Provincial Office,

## **6.6 Contractor Development Unit**

6.6.1 PMU to administer and manage the Contractor Development Programme.

6.6.2 The unit must fulfil the following functions:

- Planning contractor development interventions;
- Co-ordinating contractor training during the programme;
- Co-ordinating mentoring activities;
- Procuring expertise through in-sourcing or outsourcing to ensure that contractor development programmes that are characterised by efficient outputs and effective outcomes;
- Liaising with stakeholder partners, setting up meetings, communicating with contractors; and, interacting with financial institutions; and,
- Monitoring and evaluating contractor development programmes.

## **6.7 Contractors**

6.7.1 Notwithstanding their appointment in furtherance of inter alia B-BBEE imperatives and the objectives of the National Contractor Development Programme, participating contractors are still expected to demonstrate high levels of commitment and service excellence.

6.7.2 Also, the Rustenburg Local Municipality and or its representatives must ensure that they are not unduly influenced by contractors in regard to what specific projects are ultimately undertaken, where these are located, and how these should be proceeded with.

6.7.3 Beneficiaries of contractor development programmes should ideally be a balance of women and youth owned entities.

## **6.8 Private sector partners**

6.8.1 Despite the fact that private sector partners are valued for their contributions and while they would be involved in shared decision-making at certain levels, at no account must the Rustenburg Local Municipality be unduly influenced by them in regard to what specific projects are ultimately undertaken, where these should be located, and which contractors are appointed.



- 6.8.2 Though the pursuit of publicity and commercial mileage may, to a certain extent, be tolerated, private sector partners and co-sponsors of contractor development programmes are expected, in the main, to exemplify the noble principles associated with corporate social investment. But, any attempt to source political patronage will disqualify a company immediately from participating further in a contractor development programme.

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## SECTION 7: PROCUREMENT OF CONTRACTORS

### 7.1 Introduction

7.1.1 This Chapter stipulates guidelines in regard to procuring emerging contractors for development programmes undertaken by the Rustenburg Local Municipality. These include:

- Determining the criteria for participation in the programme;
- Inviting applications by qualifying contractors;
- Assessing applications; and,
- Appointing contractors to projects.

7.2 Determining the type and number of contractors that would participate in the programme

7.2.1 Accordingly, the "Targeting for Contractor Development Programmes: Background" in the CIDB Contractor Development stipulates the following in identifying target group types:

- Ownership

Contractor development programmes must generally target the development of black, women, disabled, and youth-owned companies in general; and particularly target the development of companies in those Work Classes and Grades where imbalances in such ownership exist;

- Supply and demand

The development of new contracting capacity and skills must be targeted towards where verifiable shortages of contractors in certain grades exist and only when these are considered critical for the realisation and achievement of the municipal objectives. This thrust seeks to develop new capacity that is in short-supply in the construction sector and the Rustenburg Local Municipality in general. It should also be applied to instances where there are non-responsiveness to tenders and where there is low tendering competition;

- Performance improvement

Contractor development programmes must be implemented to target areas where it has been proven that quality performance standards are lacking. This should contribute to improving the performance of contractors in those targeted categories and within the areas of the Rustenburg Local Municipality, thereby contributing to the improvement of the municipal service delivery objectives; and,



- Local economic development

Where feasible, the targeting and selection of contractors to development programmes must reflect municipal local economic development objectives including preferencing of participation on certain or all contractor development programmes of contractors based in jurisdiction of the Rustenburg Local Municipality.

7.2.2 The “Targeting for Contractor Development Programmes: Guidelines” dictates the Municipality to ensure the following when identifying target numbers for development:

- Limit to what the municipality can afford; and, that too, only effect within a ring-fenced/ confirmed budget;
- Limit to the type and number of work opportunities required to successfully complete a contractor development programme and, at the same time, that which would sustain all participating contractors;
- Always include the need for and cost of the requisite training and mentoring for all participating contractors; and,
- Always factor in contractor development programme overhead costs.

### **7.3 Inviting applications by qualifying contractors**

7.3.1 Having established: (1) the need for a particular contractor development programme: (2) received/allocated a budget for it; and, (3) prepared the necessary ground-work/business case, including a Strategic Plan, the PMU Manager, together with his team, must source contractors qualified to participate in the programme.

7.3.2 Invitation must be done through newspaper advertisements and through the cidb's i-tender system. This should be inline with the approved Preferential Procurement Policy and the municipal procurement Guidelines.

### **7.4 Assessing applications**

7.4.1 Stage One: The Procurement Office in conjunction with a designated member/s of the PMU must then screen all submissions, also using the prescribed processes, for compliance to tender requirements (e.g. listed on the CIDB Register of Contractors, SARS tax clearance certificate). Those that do not meet the minimum qualifying criteria must be excluded for further consideration and be advised accordingly.

7.4.2 Stage Two: Those that meet the minimum requirements must then be assessed by the PMU on the following criteria:

- BEE status;



- Locational status;
- Financial status;
- Track-record;
- Skills sets;
- Technical proposal; and,
- Financial proposal.

7.4.3 Stage Three: Once the above screening and desk-top assessments have been concluded, the PMU must set up a panel to interview all contractors assessed to have met the requirements listed in Stage Two. They must be interviewed inter alia on the following:

- Personal and company goals;
- Personal and company developmental & growth potential and attitude including entrepreneurial spirit and wherewithal;
- Willingness to contribute to the transformation of society, the sector and contractor dynamics in the province including creating jobs for the unemployed/underemployed;
- Ability in terms of the "Requirements and Guidelines for CIDB Contractor Competence Accreditation"; and,
- Keenness and capacity for undergoing mentoring and training (skills and business).

## **7.5 Appointing contractors to the programme**

7.5.1 Contractors satisfying the interview panel in regard to Stage Three requirements must be enlisted to participate in the contractor development programme.

7.5.2 Such appointment must be made conditional inter alia to:

- The contractor signing a Contractor Development and performance agreement; and,
- The contractor agreeing to further means tests (medical fitness, vetting, etc) being undertaken on a regular basis to ensure that s/he is still eligible to participate in the programme. Mitigation will be explored in cases where tests prove otherwise before any rejection or withdrawal is done, no automatic disqualification.



## SECTION 8: FINANCIAL

### 8.1 Introduction

- 8.1 This Section focuses on the financial implications of the contractor development programme undertaken by the Rustenburg Local Municipality. It outlines funding requirements for training and mentoring, project implementation, etc.

### 9.2 Training of beneficiaries

The training will be held at any venue as identified by the municipality preferably using the municipal facilities.

#### 9.2.1.1 The stipend for both supervisor and company directors / member to be as follows:

- Beneficiaries travelling between a distance of (0 – 50km) – R 120 per training day
- Beneficiaries travelling between 50km and more – R150 per training day
- The project cost estimate for allowances based on R200 per day training and an assumption of three (3) days per week is R288, 000 for a period of 6 months for (transport and food). A total of eighteen (18) beneficiaries is estimated.

#### 9.2.2 Remuneration

- 9.2.2.1 Remuneration for the company director / member during project phase will form part of the preliminary and general items as provisional sums of R 5,000 for supervisor, and R10,000 per month for director / member during project implementation.

#### 9.2.3 Mentoring:

- Mentoring to be incorporated in all Contractor Development Programmes and the costs to be secured from stakeholders and partners within the programme.

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## SECTION 9: OVERSIGHT OF CONTRACTORS

### 9.1 Introduction

9.1.1 Contractor development programmes undertaken by the Rustenburg Local Municipality must:

- Support the implementation of CIDB Best Practice Contractor Recognition Scheme and the Best Practice Project Assessment Scheme;
- Comply with the Best Practice Contractor Recognition Scheme and the Best Practice Project Assessment Scheme, including:
  - (1) Registering projects on the Best Practice Project Assessment Scheme; and,
  - (2) Preferring best practice contractors for work opportunities.

9.1.2 Undoubtedly, the most critical aspect on which the success of any contractor development programme undertaken by the Rustenburg Local Municipality is the support it provided with regards to mentoring, technical skills development, business and financial management training and facilitating access to finance.

### 9.3 Training and mentoring

9.3.1 There are various stages of development through which contractors need to progress in order to become competent and experts in their field of operation and to grow and improve their performance. Training and mentoring are, therefore, key.

#### 9.3.2 Training:

- The Rustenburg Local Municipality must organise training with an accredited training provider/s for all participating contractors.
- All training must be aligned with the relevant seta's criteria and minimum standards, NQF prescripts as well as the *Requirements and Guidelines for CIDB Contractor Competence Accreditation*.
- A training strategy must determine the overall training programme and logistics to conduct training. It should address the training approach, objectives and outcomes, based on contractors' training requirements, and also the process of identifying and mobilising training providers which can provide the required training.
- Logistical arrangements in regard to training must include the following:
  - (1) The name and accreditation status of the skills programme to be conducted;
  - (2) The name and accreditation status of the training provider;
  - (3) The number of learners to be trained;
  - (4) The venue and date/s of the training;



- (5) The training material required; and,
- (6) The inputs and outputs expected from the training.

#### 9.3.3 Mentoring:

- The Rustenburg Local Municipality must ensure that participating contractors are appropriately mentored.
- Mentorship should revolve primarily around the contractor's business management skills and knowledge, such as tendering and marketing. Mentors must be registered as mentors with the Council of Project and Construction Management Professionals or any other recognized professional body.

For contractors to graduate to self-sufficient status, they must be able to demonstrate competence in the following fields:

- Business management;
- Building and construction works management (operational and supervision); and,
- Legal issues.

9.3.3.3 Contractors must contribute financially to their own development. This includes the development of their employees.

- A contractor must contribute at least 20% of the direct cost of mentorship to a maximum of 1% of turnover.

### 9.4 Control and Accountability

9.4.3 The PMU should be in charge of control and accountability relating to contractor development programmes undertaken in the Rustenburg Local Municipality. Much of this is detailed in other sections of this policy document. What is not detailed is the need for an accompanying communication strategy that is aligned with a public accountability and mobilisation thrust:

- Alignment of contractor development programmes sponsored by the Rustenburg Local Municipality with the National Contractor Development Programme Framework:

During the planning phase a series of interactions should take place between crafters of the contractor development programmes and the custodians of the National Contractor Development Programme (CIDB and National Department of Public Works). If possible, provincially-based contractor development programmes should be jointly developed with their municipal counterparts. There should also be formal commitments through council represented by the Executive Mayor, and

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sign-off by the Municipal Manager Launch of the contractor development programmes sponsored by the Rustenburg Local Municipality:

The contractor development programmes should be championed and publicised by the Municipal Manager and the executive mayor and provincial Departments may also be invited to the launch to provide the necessary profile. Other attendees could include CIDB representatives, sector representatives, community representatives and other interested parties.

## **9.5 Financial Management**

9.5.1 Implement surety, bridging finances, overdrafts etc provisions appropriate to the level of risk within types of projects and grades of contractors.

9.5.2 Payments to contractors must be done on the following basis:

- Made strictly on the basis of payment milestones as outlined in the contractual agreement;
- Any deviation from this must only be permitted in exceptional, unforeseen circumstances and that, too, only when there is a convincing written motivation backed up by proof of the reason for it (where possible), which must still be approved and signed by the PMU Manager in consultation with the Procurement and the Finance departments. In this regard, the Contractor Development Programme Manager, in exercising his discretion, must err on the side of caution. All of this can only be done with the scope of an approved procurement policy; and,
- On no account must there be any cash payments made as all participating contractors are expected to be at the level of at least having bank accounts.

9.5.3 Ensure that the contractors are paid on time for work approved. It is not unreasonable for contractors to expect and agitate for this to happen. And, on no account should any official of the Rustenburg Local Municipality unfairly or without reason withhold any payment which is due to a contractor.

9.5.4 In all cases, the PMU should attempt to settle any payment claim without the need for the aggrieved contractor to resort to a formal internal dispute resolution process or, worse, an external legal suit.

9.5.5 An early or informal resolution to the impasse is, however, not always possible – or desirable.

9.5.6 As a matter of good faith and best practice, so long as it is within the ambit of MFMA and other supporting legislation, payment claims by contractors should not be rejected in their entirety if there is a problem with only certain aspects of it. The PMU must ensure that



aspects of the claim which are not rejected are settled, unless there are very sound, explicable reasons for not doing so.

- 9.5.7 The contractor instituting a payment claim that arises out of any act or omission by the PMU or any other representative of the Rustenburg Local Municipality must first give notice to them to settle the claim within five days of receipt of the claim. To clarify any points of contention and wherever else possible, the claim must be supported by any relevant details and documentary evidence that would ensure its proper and timely settlement.
- 9.5.8 In the case of the claim being rejected, the parties should again attempt to resolve the matter amicably – this time, within a prescribed period of five days of the claim being rejected.
- 9.5.9 If there is still no resolution, the aggrieved contractor must issue a notice of dispute to the PMU or, failing that, an appropriate departmental representative within the next two days.
- 9.5.10 A dispute would normally arise where a payment claim by a participating contractor is expressly rejected by the PMU or its servicing sister directorate (e.g. legal, financial or procurement department);
- Does not receive payment or an official response explaining any delay within the prescribed timeframe; or,
  - The contracting parties failing to reach an amicable resolution within the stipulated timeframe regarding a point of dispute (e.g. quantum of payment).
- 9.5.11 The notice of dispute must provide sufficient information and documentary evidence relating to the dispute to give the PMU and or its representatives adequate opportunity to formulate a response.
- 9.5.12 The aggrieved contractor must simultaneously give notice to the adjudicator who had been nominated by the PMU and mutually agreed to by the aggrieved in terms of the main contract.
- 9.5.13 It is the duty of the adjudicator to set down the matter for adjudication within five days of the dispute notice date.

## **9.6 Monitoring and Evaluation**

- 9.6.1 The monitoring and evaluation of projects within contractor development programmes should happen on the following two levels:

By the Construction Industry Development Board, as the overseer and promoter of contractor development programmes throughout the country; and,



- By the Contractor Development Unit, as the overseer and promoter of contractor development programmes under the aegis of the Rustenburg Local Municipality; and, which is required to report to CIDB on a quarterly basis.

9.6.2 The PMU must measure all contractor development programmes using the key performance indicators listed in the table below:

INDICATOR	DESCRIPTION	FREQUENCY
<b>Budget</b>	Amount allocated to programme	Annually
<b>Enrolments</b>	Number of contractors enrolled	Once off
<b>Tenders</b>	Awarded: (1) number; and, (2) value	Per phase
<b>Mentoring and training</b>	Number of mentors appointed; and, contact time between mentors and contractors	Quarterly
<b>Financial reporting</b>	Accessed: (1) number; and, (2) value	Monthly
	Expenditure: (1) planned; and, (2) actual	
	Direct contractor contributions to mentoring and training	
<b>Qualifications</b>	Number awarded	Annually
<b>Upgrades</b>	Number of contractors; and, levels	Annually
<b>Graduations</b>	Number of contractors	Annually
<b>Exits</b>	Number of contractors	Annually

9.6.3 The PMU must, in its quarterly report to CIDB, submit the information listed in the table below:

REPORT	DESCRIPTION	FREQUENCY
<b>Enrolments</b>	Names and CRS numbers of contractors enrolled	Annually
<b>Graduations</b>	Names and CRS numbers of contractors graduating	Annually
<b>Qualifications</b>	Names of employees - with the names and CRS numbers of their employers (contracting entities) - together with CIDB recognised NQF qualifications awarded	Annually
<b>Exits</b>	Names and CRS numbers of contractors exiting the development programme	Annually



- 9.6.4 A monitoring and reporting system, established by the Contractor Development Unit in collaboration with CIDB, must monitor achievement of the outputs and gauge these against the targets set. This arrangement must also be used to cross-check whether projects and participating contractors have been registered by CIDB.
- 9.6.5 Evaluation of the contractor development programmes undertaken by the Rustenburg Local Municipality is necessary to provide feedback and lessons that can be extracted so that the programme can be periodically modified and refined. To this end, reviews of the programme must be conducted by CIDB
- 9.6.6 These reviews may be either formative (that is, during the implementation phase) or summative (that is, at the conclusion of the programme) or even both. And, they may be conducted as issues arise or to obtain understanding of a particular focus area/sector/component. Whatever the case, there must be pre-agreement on preferred/desired arrangements.

## 9.7 Selection Criteria

### The following will be the requirements for applicants:

- 9.7.1 The applicant must be documented resident of the Rustenburg area and must attach proof of residence in their application (municipal rates & taxes, letter from the Tribal Authority),.
- 9.7.2 The applying contractor must be an active registered construction contractor with CIPC (e.g. cc, Pty Ltd), with an original certified copy of valid tax clearance Certificate and credit record from the Bank.
- 9.7.3 The applying contractor must be registered with the CIDB on grade 2 to 4 and must be active on the cidb Register of Contractors (RoC) at the time of appointment.
- 9.7.4 The applying contractor must be wholly or partly owned by women, youth or disabled.
- 9.7.5 The applying contractor must be willing together with the nominated supervisor to subject themselves to the entire compulsory process as set by the municipality.
- 9.7.6 The number of participating directors is limited to 1 director and 1 supervisor per entity, the company must nominate the participating director in writing.

The person applying as the **CONTRACTOR** for the programme should meet the following requirements:

- Be literate in English
- Be willing to enter into a full time Learnership contract for construction contractor at NQF level 4 as well as Entrepreneurial / Business Skills Programme
- Have a minimum of Grade 12 (Std 10)
- A diploma or degree in technical field will be an added advantage



The person applying as the **SUPERVISOR** should meet the following requirements:

- Be literate in English
- Be willing to enter into a full time Learnership contract for construction contractor at NQF level 4 as well as Entrepreneurial / Business Skills Programme
- Be employed by the contractor in terms of a formal agreement for the period of the Learnership, without any remuneration being stipulated on the agreement
- Have a minimum of Grade 12 (std 10)
- A diploma or degree in technical fields would serve as added advantage

#### 9.8 Allocation of projects (Set aside)

9.8.1 Projects will be awarded from a pool of projects as identified by the municipality:

Projects with a value of R500 000 to R1.5m will be set aside (ring – fenced) for contractors with grading designations from 2 to 4. This means that contractor incubators will be allowed to tender amongst themselves. Despite the fact that these projects will be set aside, there will also be an element of fairness, competitiveness, accountability and efficiency between the various contracting entities that will be participating in the programme. Reference will also be made to related sections of the MFMA.

Total Number of Contractors	CIDB grading allocation (R) per grade	Maximum Value of Contracts (R) first Phase	Maximum Value of Contracts (R) second Phase	Maximum Value of Contracts (R) third Phase
<b>Grade2(10 contractors)</b>	R 650,000	R 6,500,000	R 20,000,000	R 40,000,000
<b>Grade3 (5 contractors)</b>	R 2,000,000	R 10,000,000	R 20,000,000	R 32,500,000
<b>Grade4 (3 contractors)</b>	R 4,000,000	R 12,000,000	R 19,500,000	R 39,000,000
<b>18 contractors</b>		<b>28,500,000.00</b>	<b>59,500,000.00</b>	<b>111,500,000.00</b>

A total investment of **R199, 500,000** is estimated for three years with a total number of 18 contractors



## SECTION 10: TERMINATION OF CONTRACTS

### 10.1 Introduction

- 10.1.1 Contracts, as a rule, must be limited to a pre-agreed / predefined period which does not exceed 3 years.
- 10.1.2 Depending on the reasons, contracts relating to development programmes undertaken by the Rustenburg Local Municipality may be terminated either prematurely or at the end of the pre-agreed to period.
- 10.1.3 This Section details the two ways of terminating contracts.

### 10.2 Exiting the contractor development programme: Graduation

- 10.2.1 In order to graduate from a contractor development programme undertaken by the Rustenburg Local Municipality, a contractor must be re-evaluated and should meet the requirements for:
- CIDB Contractor Competence Accreditation; and,
  - Upgrading to a higher grade designation.
- 10.2.2 In addition, a formal application must be submitted to CIDB for upgrading;
- 10.2.3 Whether they graduate or not, all contractors are required to exit the contractor development programme after the agreed period as specified in the programme business case.
- 10.2.4 Generally, this should not exceed three years (which is the time it would normally take to acquire the necessary competence and experience).
- 10.2.5 Still, the PMU may, by applying firm criteria fairly and consistently (and not using discretion), decide to provide further support to contractors that have not graduated but:
- (1) only if and when such contractors have shown significant commitment and progress towards graduating; and,
- (2) conditional to such further support being for a reasonably specified period.

### 10.3 Exiting the contractor development programme: Early termination

- 10.3.1 If circumstances require the replacement of a contractor (e.g. the death or incapacitation of the owner that leads to the participating contracting entity being inoperable; through the voluntary withdrawal of the contractor from the programme; or, by imposed termination through non performance) every effort must be made by the Contractor Development Unit, where feasible, to replace the contractor.



10.3.2 Replacing a contractor on the programme must be done under certain circumstances only as doing so in all instances may not always make financial sense. The following cases make sense:

- Where there is a critical death of the requisite skills on which the original contractor was being trained;
- When the original contractor has left very early in the programme and there is adequate time left for the replacement contractor to benefit;
- When there remains an adequate budget (usually the unclaimed / unpaid portion that would have been due to the original contractor) to fund the replacement contractor's participation;
- When the replacement contractor has been assessed as showing a capacity for being able to "catch up" quickly; and,
- Where the original contractor has not lodged an appeal against the decision to terminate their participation early; or, where such an appeal has been lodged, there is, in the considered opinion of the Contractor Development Programme Manager (acting on informed advice), no chance of the contractor's appeal succeeding.

10.3.3 Imposing early termination through non-performance shall only be done:

- On the basis of fair and reasonable criteria that are both consistently applied and enshrined in policy; and,

As an option of last resort where resolution or rehabilitation is deemed by the Contractor Development Programme Manager, acting on informed advice, as improbable or unfeasible.

10.3.4 Should a contractor's participation be terminated on the basis of non-performance or for any other reason permitted in law or policy, that contractor still retains the right to appeal the decision and, if successful, obtain redress and compensation.

#### **10.4 Dispute resolution**

10.4.1 However justifiable and compelling the reason may be, no contractor may be unilaterally excluded from the construction development programme without having access to recourse mechanisms;



10.4.2 Unless an alternative procedure is explicitly stated in the contract that binds the two parties, in all instances where a contractor has appealed against being excluded from a contractor development programme the Dispute Resolution Process as outlined in the “Guidelines for Implementing Contractor Development Programmes, September 2011” shall apply; and, where these are incomplete or unclear, then the general Dispute Resolution Process General Condition of Contract (GCC) 2010 shall apply.

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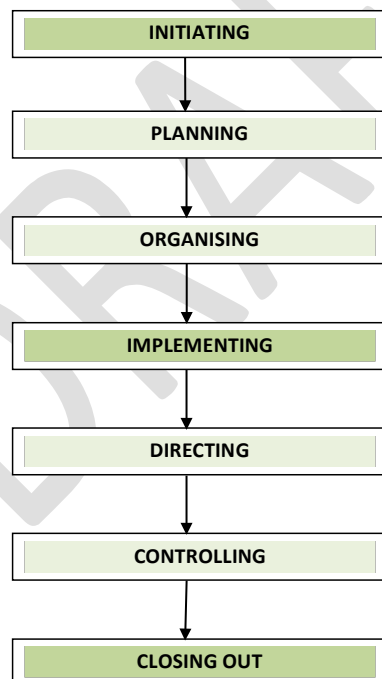


## SECTION 11: CONCLUSION

This chapter serves as a summary of the foregoing guidelines and, further, provides a step-by-step implementation plan for rolling-out contractor development programmes in an effective, efficient, uniform and accountable manner.

### 11.1 Phases of a contractor development programme

The following is a simple representation of the process flow for how contractor development programmes, of whatever complexity, are best implemented. Although programme management tools such as controlling and planning will, and should, feature throughout the duration of a programme from initiation to termination, there are times during the programme life-cycle when certain management tools become more critical than the others.





11.2 It is expected that the inception of the contractor Development Programme will address a number of developmental facing the construction industry in the Rustenburg vicinity. The introduction of the programme provides the Municipality with the opportunity to introduce a number of new management interventions necessary to ensure successful development of construction industry capacity.

The Municipality will implement the programme in consultation with and in support of the CIDB prescripts. The success of the development programme will be measured by its ability to achieve the following:

- Targeted enterprises that are able to perform contracts or portions thereof which are of significant scope and size
- There is an increase in the value and number of contracts executed by targeted enterprises
- There is an increase in the number of targeted enterprises able to tender on relatively large construction contracts at higher CIDB grading
- Targeted enterprises increase in number at prime level
- Upward mobility of contractors to higher grades within the CIDB's Contractors Grading Designations – contractors being re-graded upwards as a result of completed projects.